

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
NEWPORT NEWS DIVISION**

In re:

Carter's Grove, LLC,
Debtor.

Case No. 11-51330-SCS

Chapter 11

**OBJECTION TO THE SECOND INTERIM APPLICATION OF FOLEY & LARDNER LLP
FOR COMPENSATION FOR SERVICES RENDERED AND REIMBURSEMENT OF
EXPENSES AS SPECIAL LITIGATION CO-COUNSEL FOR CARTER'S GROVE, LLC FOR
THE PERIOD NOVEMBER 1, 2011 THROUGH JANUARY 31, 2012**

W. Clarkson McDow, Jr., the United States Trustee for Region Four, by counsel, objects to the second interim application of Foley & Lardner LLP ("Foley") for compensation and the reimbursement of expenses as special litigation co-counsel for the debtor, filed March 8, 2012 at docket entry 156 ("Application"). In support of his objection, the U.S. Trustee states:

1. On March 22, 2012, this Court entered an order directing the U.S. Trustee to appoint a Chapter 11 trustee. The Court entered a supplemental Order further detailing its decision to direct the appointment of a Chapter 11 trustee on March 28, 2012.
2. On April 4, 2012, the U.S. Trustee appointed Stanley J. Samorajczyk to serve as Chapter 11 trustee in this case. The Court approved the appointment by Order entered April 6, 2012.
3. A hearing on the Application is currently set for Friday, April 13, 2012.
4. In the Application, Foley prays for entry of an order "authorizing and directing the Debtor to immediately pay the approved unpaid fees and expenses to Foley..."

Debera F. Conlon, Esq., AUST, VSB No. 20837
Cecelia A. Weschler, Esq., VSB No. 28245
Kenneth N. Whitehurst, III, Esq., VSB No. 48919
Office of the United States Trustee
200 Granby Street, Room 625
Norfolk, VA 23510
(757) 441-6012

5. The debtor does not have funds available for the payment of Foley's fees and expenses, if approved.

6. On March 14, 2012, Foley's first interim application for compensation and reimbursement of expenses was granted by this Court, awarding Foley \$75,157 in fees and \$11,957.66 in expenses. The debtor has not paid those fees and expenses, and is currently unable to.

7. By the date of the hearing on the Application, the chapter 11 trustee will have been involved in this case for just over one week.

8. Given the recent appointment of the chapter 11 trustee, the U.S. Trustee objects to the granting of Foley's Motion at the April 13, 2012 hearing, and respectfully requests that the Application be denied without prejudice.

9. 11 U.S.C. § 331 states that professionals such as Foley "may apply to the court not more than once every 120 days after an order for relief in a case under this title, or more often if the Court permits..."

10. Foley's first interim fee application was filed February 6, 2012. The current Application was filed 31 days later, on March 8, 2012. No request has been made by Foley for a shortening of the 120 day period set forth in 11 U.S.C. §331. The Application was filed without leave of this Court to shorten the 120-day period set forth in §331, and should be denied without prejudice.

11. Given the debtor's current inability to pay, denial of the Application without prejudice will not harm Foley, and will allow the newly-appointed chapter 11 trustee time to review the fees and expenses, as well as the litigation in which the work was performed.

WHEREFORE, the U.S. trustee respectfully requests entry of an Order denying the Application without prejudice, and for such other relief as the Court deems appropriate and just.

Respectfully submitted,

W. Clarkson McDow, Jr.
United States Trustee for Region Four

By: /s/ Kenneth N. Whitehurst, III
Debera F. Conlon
Assistant United States Trustee

Kenneth N. Whitehurst, III
Trial Attorney

CERTIFICATE OF SERVICE

I certify that on April 6, 2012, service of the foregoing on all attorney Users in this case was accomplished through the Notice of Electronic Filing, pursuant to CM/ECF Policy 9 of the United States Bankruptcy Court for the Eastern District of Virginia, Case Management/Electronic Case Files (CM/ECF) Policy Statement, Version 09/04/09.

I further certify that, on the same date, a true copy was served by email and U.S. Mail, postage prepaid, on Stanley J. Samorajczyk, Esq., Chapter 11 Trustee, McNamee Hosea, 888 Bestgate Road, Suite 304, Annapolis, Maryland 21401.

/s/ Kenneth N. Whitehurst, III
Kenneth N. Whitehurst, III